
SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
1455 Market Street
San Francisco, CA 94103-1398

NUMBER: 30024N DATE: June 13, 2007
RESPONSE REQUIRED BY: July 13, 2007

PERMIT MANAGER: Robert Lawrence PHONE: 415-503-6808 Email: robert.j.lawrence@usace.army.mil

1. INTRODUCTION: Mr. Matt Butler, of the San Rafael Yacht Harbor, and Mr. Dan Thompson, an adjacent property owner, (through their agent, Mr. Jeff Cotsifas) have applied for a ten-year Department of the Army permit to maintenance dredge the San Rafael Yacht Harbor (SRYH) basin adjacent to the San Rafael Canal in the City of San Rafael, Marin County, California. The SRYH basin includes Mr. Thompson's property. The purpose of the proposed dredging is to return the SRYH basin to its originally permitted depth to allow safe navigational depths for recreational boats. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. PROJECT DESCRIPTION: As shown in the attached drawings, the applicants plan to remove approximately 18, 584 cubic yards (cys) of sediment from the 4.5-acre (approximately) SRYH basin in an initial episode and a total of 40,000 cys over the life of the permit. The existing depth is approximately -4 feet mean lower low water (MLLW). The design depth for the SRYH basin is -6 feet MLLW plus an additional one-foot overdredge allowance. The material would be removed using a clamshell or hydraulic dredge and will be removed by barge to the San Pablo Bay Disposal Site (SF-10) or to the Alcatraz Disposal Site (SF-11).

Prior to each dredging episode, the Dredge Material

Management Office (DMMO) will evaluate the sediments to be dredged for disposal or reuse suitability. The DMMO includes representatives from the U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), and the U.S. Army Corps of Engineers (Corps). The DMMO is tasked with approving sampling and analysis plans in conformity with testing manuals, reviewing the test results and reaching consensus regarding a suitable disposition for the material.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Species and critical habitat currently identified as potentially impacted by the proposed project include Chinook salmon, coho salmon and steelhead trout.

Please note that programmatic biological opinions (BOs) were issued by FWS (March 12, 1999) and NMFS (September 18, 1998) for the Long Term Management Strategy for the placement of dredged material in the San Francisco Bay region. As a result of the BOs there are allowable time frames to dredge to protect the habitat for threatened (and endangered) species and the species themselves per Section 7 of the Endangered Species Act of 1973, as amended. If the dredge work is conducted within those time frames, there is no need for consultation. A previous Section 7 consultation with NMFS for dredging in the San Rafael Canal (Department of the Army Regional Permit #9 – our file number 26633N) resulted in conditions to allow dredging in this area throughout the year. NMFS has indicated that those same conditions (refer to the last paragraph of this section) are appropriate for the project.

Federally-listed endangered adult winter-run Chinook salmon (*Oncorhynchus tshawytscha*) migrate through San Francisco Bay, as well as Suisun Bay and Honker Bay, to spawning areas in the upper Sacramento River during the late fall and early winter. Juveniles travel downstream through San Francisco Bay to the Pacific Ocean in the late fall as well. The movements of adult and juvenile salmon through the Bay system are thought to be rapid during these migrations.

Central California Coast ESU Coho salmon (*Oncorhynchus kisutch*) is listed as threatened (October 31, 1996, 61 FR 56138). The dredging

project is located within designated critical habitat for Central California Coast Coho salmon (May 5, 1999, 64 FR 24049).

Central California populations of steelhead trout (*Oncorhynchus mykiss*) were classified as federally threatened in August 1997. The steelhead that occur in San Francisco Bay are included in this ESU (evolutionarily significant unit) and therefore receive protection under the Endangered Species Act. There is concern that steelhead migrating through the Bay to streams in the North Bay might enter the project site.

In order to avoid or minimize potential impacts to the above species, if a Department of the Army Permit is issued for this project, it will contain the following condition: Until a practicable upland dredged material disposal facility becomes available, suitable (suitable for unconfined aquatic disposal) material dredged between June 1 and November 30 may be disposed at SF-10; suitable material dredged between December 1 and May 31, may be disposed at SF-11.

Magnuson-Stevens Fisheries Conservation and Management Act: This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The proposal would impact approximately 4.5 acres of EFH that might be utilized by various species of sole, shark and rockfish. The SRYH basin is located along the San Rafael Canal in San Rafael, Marin County. The recently-deposited bottom sediments to be dredged during maintenance dredge activities are composed mainly (approximately 95%) of silts and clays (mud). It is presumed that fish species utilizing the area would be using it for feeding during a period of growth. When dredging occurs, the fish should be able to find ample and suitable foraging areas in and along the adjacent San Rafael Canal. As the infaunal community recovers in the dredged area, fish species will return to feed.

In the report entitled, “San Francisco – Oakland Bay Bridge, East Span Seismic Safety Project; Baywide Eelgrass (*Zostera marina* L.) Inventory in San Francisco Bay,” dated October 2004, prepared by Markel & Associates, Inc., the project area is not mapped as an area containing eelgrass. Therefore, eelgrass is not expected to be established in this area.

Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. This determination is based on the fact that the yacht harbor has been dredged several times in the past, the disposal site has been used since the 1960s for disposal and, therefore, both sites are considered to be disturbed and the proposed activity will result in no new impacts to EFH. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with NMFS.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that a valid request has been submitted to the San Francisco Bay Regional Water Quality Control Board for State water quality certification. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write

to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612 by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). On October 29, 2004 the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission, and the San Francisco Bay Regional Water Quality Control Board adopted the “Small Dredger Programmatic Alternatives Analysis (SDPAA) for Disposal of Maintenance Dredged Material in the San Francisco Bay Region.” Due to the limited disposal alternatives in the San Francisco Bay region, small dredgers (as defined in the SDPAA) are not required to submit an alternatives analysis for disposal of maintenance-dredged material. The SRYH is included in the list of small dredgers in the SDPAA.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's certification. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are

discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

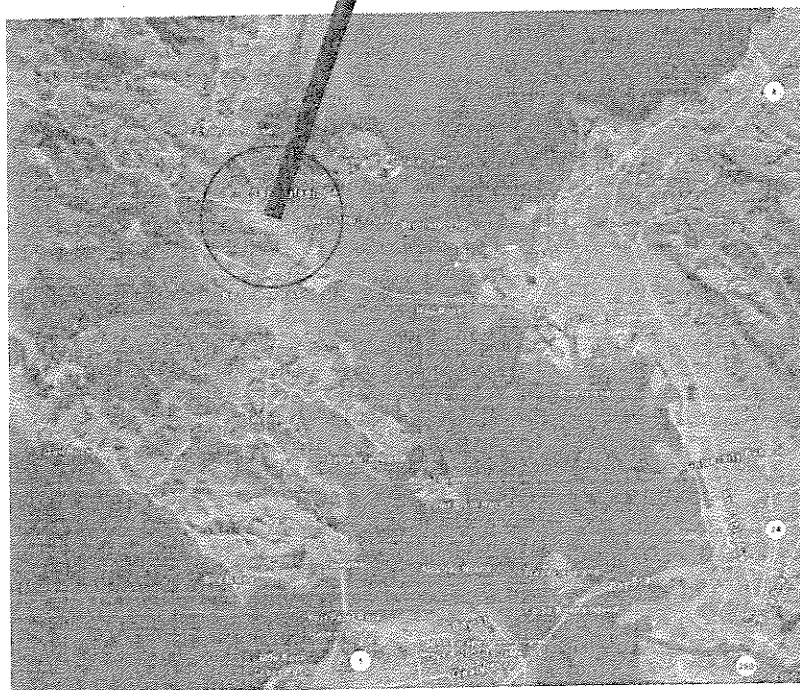
5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments

are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

6. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to Mr. Robert Lawrence at the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Mr. Robert Lawrence of our office at telephone number (415) 503-6808 or by e-mail at: robert.j.lawrence@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.



SAN RAFAEL
YACHT HARBOR



PURPOSE: Maintain safe,
navigable depths
DATUM: MLLW
ADJACENT PROPERTY OWNERS:
Peter Pelz
Helmut's Marine

VICINITY MAP
NOT TO SCALE

PROJECT: Maintenance dredging
IN: San Rafael Canal
AT: San Rafael Yacht Harbor
COUNTY: Marin
APPLICATION BY: San Rafael Y.H.

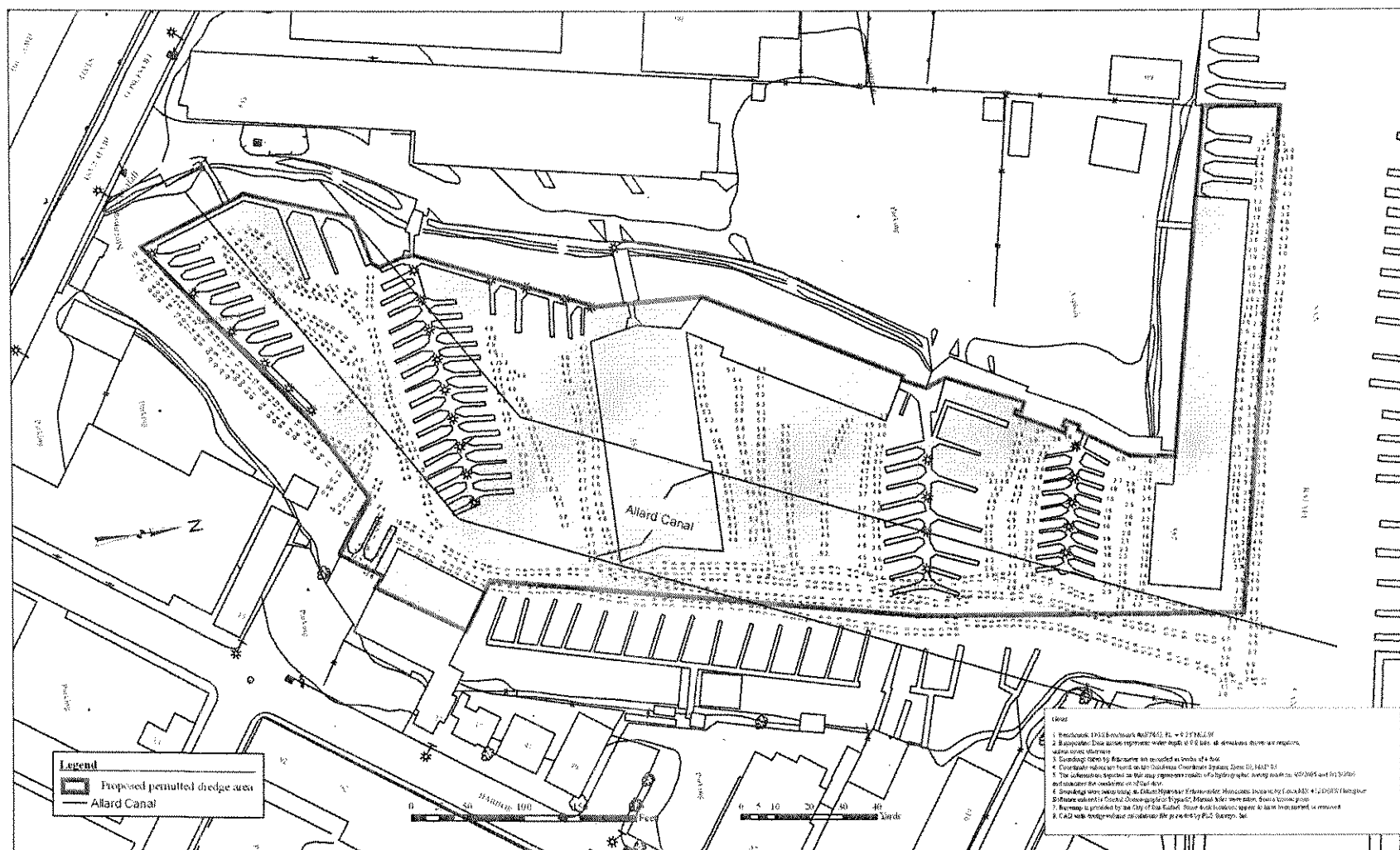


Figure 1. San Rafael Yacht Harbor Permitted Dredge Area

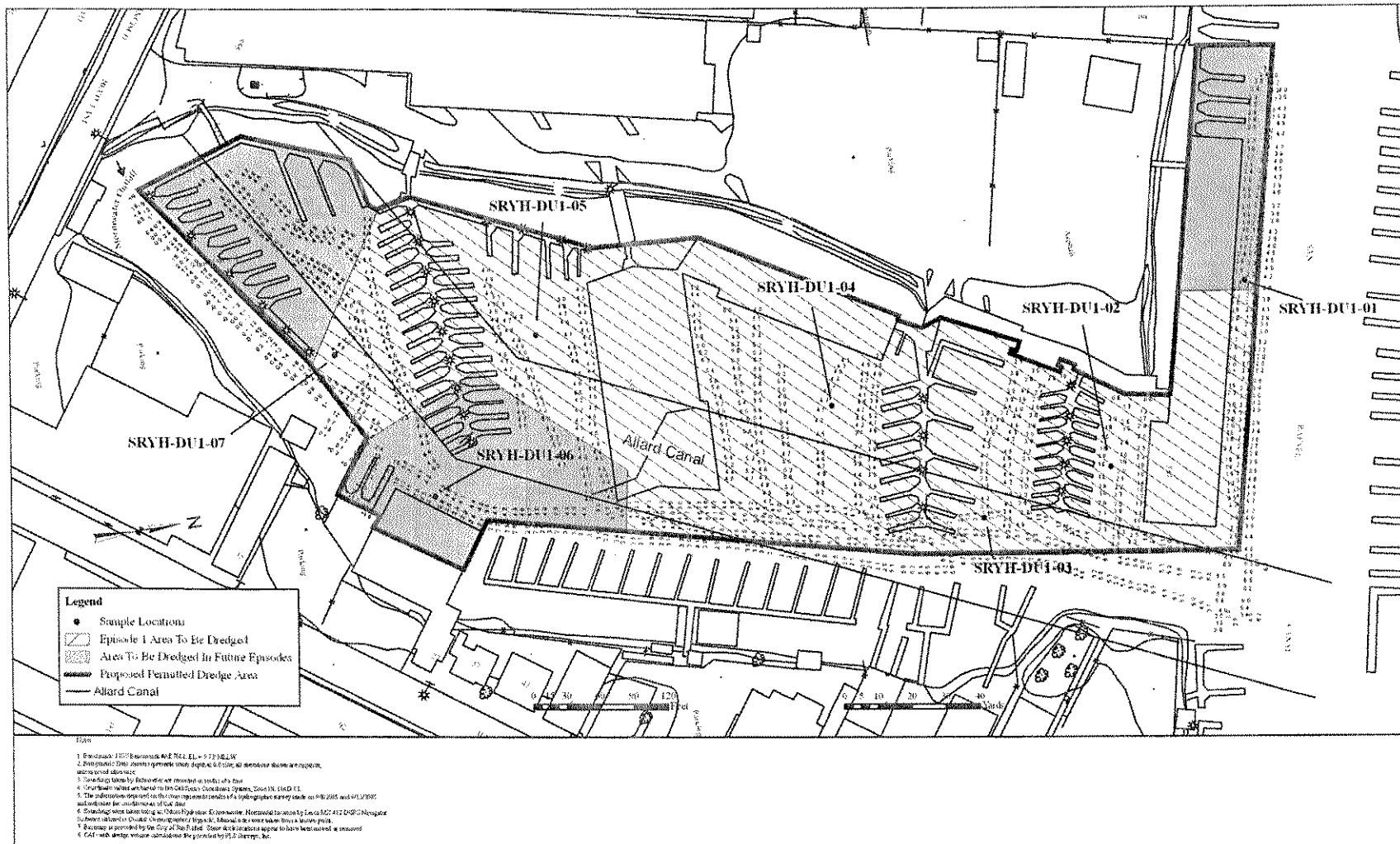


Figure 2. Episode 1: Sample Locations and Area to be Dredged